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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**  
8 **OF THE STATE OF WASHINGTON**

9 IN RE THE MATTER OF ENFORCEMENT  
10 ACTION AGAINST

11 JEFFERSON COUNTY REPUBLICAN  
12 CENTRAL COMMITTEE,

13 Respondent.  
14

PDC CASE NO. 04-288

FINAL ORDER IMPOSING FINE

15 **I. INTRODUCTION**

16 The Washington State Public Disclosure Commission (Commission) conducted an  
17 adjudicative proceeding (enforcement hearing) in the above-captioned matter on October 26,  
18 2004 at the Commission offices at the Evergreen Plaza Building, 711 Capitol Way, Room 206,  
19 Olympia, Washington. The hearing was held pursuant to chapter 34.05 RCW, chapter 42.17  
20 RCW, WAC 390-37, and WAC 10-08. The Commissioners present included: Michael  
21 Connelly, Francis Martin, Earl Tilly, and Jane Noland. Senior Counsel Nancy Krier,  
22 Commission Counsel was also present.

23 Also present were: John White, attorney for Jefferson County Republican Central  
24 Committee (Respondent); Assistant Attorney General John Lane, PDC Staff Counsel; Vicki  
25 Rippie, PDC Executive Director; Susan Harris, Assistant Director; Phil Stutzman, Director of  
26

1 Compliance; and Senior Assistant Attorney General Linda Dalton. The hearing was recorded  
2 and open to the public.

3 This matter involves the allegation that the Respondent violated RCW 42.17.530 with a  
4 campaign television advertisement entitled "Pinocchio Rose" which was broadcast during the  
5 election campaign for Jefferson County Commissioner in 2003 and which discussed candidate  
6 Mark Rose.

## 7 II. PREHEARING MATTERS

8 A Prehearing Order dated October 11, 2004 governed the prehearing matters in this  
9 case.

## 10 III. HEARING PROCEDURAL MATTERS

### 11 Written Materials Received

12 At the hearing, the Commission was provided a copy of the Report of Investigation  
13 dated June 14, 2004; the Notice of Administrative Charges dated July 2, 2004; a Stipulation of  
14 the Parties as to Agreed Facts and Exhibits dated October 18, 2004 (as orally corrected by the  
15 parties at the hearing); Commission (PDC) Staff Trial Brief; Commission (PDC) Staff's  
16 Witness List; PDC Staff's Exhibit List and PDC Staff's Exhibits A - L; PDC Staff  
17 Supplemental Authority; Hearing Memorandum of Respondent; Respondent's Witness List  
18 and Exhibit List; and, Respondent's Exhibits 1 - 7.

### 19 Evidence Admitted and Stipulation

20 By a 4-0 vote the Commission accepted the Stipulation. The Stipulation is attached and  
21 incorporated with corrections noted in the Findings of Fact. The Commission considered the  
22 Stipulation including the agreed-to facts, as corrected on the record.

23 The Commission admitted and considered the following exhibits as follows:

24 *PDC Staff Exhibits (with stipulations by Respondent and joint exhibits noted):*

- 25 A. Notice of Administrative Charges (stipulated as a correct copy, not for  
26 the truth of the contents)

- 1 B. PDC Staff Report of Investigation (stipulated as a correct copy, not for  
2 the truth of the contents)  
3 C. October 17, 2003 complaint from William Briery (stipulated)  
4 D. August 27, 2003 *Port Townsend and Jefferson County Leader* (Leader)  
5 article (stipulated)  
6 E. September 3, 2003 *Port Townsend and Jefferson County Leader*  
7 (Leader) letter to the editor (stipulated)  
8 F. September 12, 2003 *Peninsula Daily News* article (stipulated)  
9 G. Comcast record of cablecast dates and times for Pinocchio Rose  
10 Advertisement (stipulated)  
11 H. September 19, 1982 *Los Angeles Times* travel article by Mark Rose  
12 (admitted)  
13 I. September 19, 1982 *Los Angeles Times* book review by Mark Rose  
14 (admitted)  
15 J. September 12, 1982 *Los Angeles Times* book review article by Mark  
16 Rose (admitted)  
17 K. Staff interview of Leola Armstrong (admitted)  
18 L. PDC C4 accompanying Schedule A from the Jefferson County  
19 Republican Central Committee for October 1, 2003 (admitted)  
20 M-1. Video of Pinocchio Rose (stipulated as Joint Exhibit M-1)  
21 N-3. March 2, 2004 facsimile from Sally Parker to Sarah Streiff at *Los*  
22 *Angeles Times* (stipulated as Joint Exhibit N-3)  
23 O-6 October 23, 2003 letter from Susan Marett to Phil Stutzman with copy  
24 of *Leader* article dated October 22, 2003 (stipulated as Joint  
25 Exhibit O-6)  
26

21 *Respondent's Exhibits (with stipulations by PDC Staff and joint exhibits noted):*

- 22 M-1. Pinocchio Rose video (stipulated Joint Exhibit M-1)  
23 2. May 18, 2004 letter from Susan Marett to Sally Parker, together with  
24 mailer (stipulated)  
25 N-3. March 2, 2004 Facsimile from Sally Parker to Sarah Streiff at *Los*  
26 *Angeles Times* (stipulated as Joint Exhibit N-3)

- 1           4.     Note to File of Sally Parker concerning telephone conversation  
2                 (stipulated)
- 3           5.     January 14, 2004 letter from Ron Gregory to Phil Stutzman (stipulated)
- 4           6.     October 23, 2003 letter from Susan Marett to Phil Stutzman with copy  
5                 of *Leader* article dated October 22, 2003 (stipulated as Joint Exhibit O-  
6                 6)
- 7           7.     October 31, 2003 memorandum to Phil Stutzman from Ron Gregory  
8                 (stipulated)

9     Witness Testimony

10           The Commission considered the testimony of the following witnesses: Sally Parker;  
11     Mark Rose (via telephone); Ronald Gregory (via telephone); Noel Greenwood (via telephone);  
12     and Bryn Armstrong (via telephone).

13     Oral Argument

14           The Commission considered the oral arguments of the parties.

15     Motion for Summary Judgment

16           Respondent made an oral Motion for Summary Judgment at the conclusion of the PDC  
17     staff presentation of its witnesses and evidence. Among other arguments, Respondent argued  
18     that that the "thrust" (or "gist" or "sting") of the substance of the "Pinocchio Rose"  
19     advertisement was true and the law of libel or defamation should apply, thus the case against  
20     Respondent should not proceed. PDC staff argued that the motion should be denied. Among  
21     other arguments, the PDC staff argued that the motion was essentially a motion to dismiss for  
22     failure of PDC staff to make its case, assumed facts not in evidence, that defamation law did  
23     not apply to the facts of this case, and argued the facts would support finding violations of  
24     RCW 42.17.530 by Respondent as alleged.

25           The Commission considered the arguments. By a 4-0 vote the Commission denied the  
26     motion and the case proceeded.

          Based upon the evidence and arguments considered, the Commission makes the  
following findings and conclusions, and enters the following order:

1 IV. FINDINGS OF FACT

2 Findings 1 - 17

3 1 - 17. The Commission accepts stipulated facts 1 - 17 in the attached Stipulation and  
4 they will be entered as Findings of Fact 1 - 17 with the following corrections and changes  
5 made on the record at the hearing:

6 No. 7: The first sentence (beginning with "Prior to airing ...") and the fourth  
7 sentence (beginning with "Mr. Greenwood initially...") are no longer stipulated  
8 facts.

9 No. 8: The year referenced in this stipulated fact has been corrected as 1982,  
10 not 2002.

11 No. 14: An end quote ("") should be at the end of this stipulated fact.

12 Findings 18 - 24

13 18. The employment history of Mark Rose at the *LA Times* was an issue in the  
14 campaign for Jefferson County Commissioner in the 2003 general election.

15 19. In October 2003, Bryn Armstrong, whose spouse Leola Armstrong was vice-  
16 chair of the Respondent, provided to Noel Greenwood a list of articles and copies (clips) of  
17 articles authored by Mark Rose, as well as other information concerning Mark Rose's  
18 campaign. Noel Greenwood is a former editor at the *LA Times* who retired in 1992. This  
19 information provided to Noel Greenwood by Bryn Armstrong was provided prior to October  
20 17, 2003.

21 20. In a statement made under oath prior to her death (Exhibit K), Leola Armstrong  
22 stated that she was aware her husband had contacted Noel Greenwood and obtained some  
23 information regarding Mark Rose's employment at the *LA Times*. She stated she was aware of  
24 the October 17, 2003 faxed letter from Noel Greenwood to her husband.

25 21. During the campaign, and prior to and during the broadcast of the Pinocchio  
26 Rose ad, no representative of the Respondent contacted any current staff member of the *LA Times* or its research department to inquire about Mark Rose's employment history at that

1 newspaper. The Respondent's chairman, Ronald Gregory, was aware that Mark Rose had an  
2 employment history with the *LA Times*.

3 22. During the campaign, and prior to and during the broadcast of the Pinocchio  
4 Rose ad, no representative of the Respondent contacted Mark Rose or his campaign to inquire  
5 about or confirm his employment history with the *LA Times* or to obtain a copy of the clip file  
6 of articles written by Mark Rose.

7 23. Mark Rose was employed by the *LA Times* and was the author of several  
8 articles published by that newspaper.

9 24. Ronald Gregory was a subscriber and regular reader of the *Port Townsend and*  
10 *Jefferson County Leader*.

11 25. No evidence was presented that Mark Rose wrote a letter to the editor of the *LA*  
12 *Times*.

#### 13 V. CONCLUSIONS OF LAW

14 1. The Commission has jurisdiction to hear this matter pursuant to RCW  
15 42.17.350 et seq., including RCW 42.17.370(5).

16 2. The PDC staff has the burden to establish a violation of RCW 42.17.530 by  
17 clear and convincing evidence.

18 3. While the Respondent challenges the constitutionality of RCW 42.17.530, and  
19 has made a record regarding its constitutional argument, as an administrative agency the  
20 Commission must presume the statute is constitutional and cannot rule upon the  
21 constitutionality of a statute.

22 4. RCW 42.17.530 states:

23 (1) It is a violation of this chapter for a person to sponsor with actual malice:

24 (a) Political advertising that contains a false statement of material fact about  
25 a candidate for public office. However, this subsection (1)(a) does not apply to  
26 statements made by a candidate or the candidate's agent about the candidate  
himself or herself;

1 (b) Political advertising that falsely represents that a candidate is the  
2 incumbent for the office sought when in fact the candidate is not the incumbent;

3 (c) Political advertising that makes either directly or indirectly, a false claim  
4 stating or implying the support or endorsement of any person or organization  
when in fact the candidate does not have such support or endorsement.

5 (2) Any violation of this section shall be proven by clear and convincing  
6 evidence.

7 5. RCW 42.17.505 states:

8 The definitions set forth in this section apply throughout RCW 42.17.510  
through 42.17.540.

9 (1) "Actual malice" means to act with knowledge of falsity or with reckless  
10 disregard as to truth or falsity.

11 (2) "Sponsor" means the candidate, political committee, or person paying for  
the advertisement. If a person acts as an agent for another or is reimbursed by  
another for the payment, the original source of the payment is the sponsor.

12 (3) "Incumbent" means a person who is in present possession of an elected  
13 office.

14 6. The Respondent sponsored the "Pinocchio Rose" television advertisement  
15 concerning candidate Mark Rose.

16 7. The following statement in the "Pinocchio Rose" television advertisement was  
17 false: "Mark Rose claimed to be a staff member of the *LA Times* when all he did was write a  
18 letter to the editor." The statement is false because Mark Rose was an employee of the *LA*  
19 *Times*, he wrote several articles that were published in the *LA Times*, and no evidence was  
20 presented to show he wrote a letter to the *LA Times*.

21 8. The employment history of candidate Mark Rose at the *LA Times*, and the  
22 statement that "all he did" was write a letter to the editor, were material facts about a candidate  
23 in a campaign. The facts comprised approximately one-third of the Pinocchio Rose television  
24 advertisement, the advertisement was showcased by the Respondent and was the prime or only  
25 television advertisement run by the Respondent in this campaign. Mark Rose's employment  
26

1 history was material to this election campaign. The Respondent caused the ad to be broadcast  
2 400 times in this local government election campaign.

3 9. The Respondent acted with reckless disregard as to the truth or falsity of its  
4 "Pinocchio Rose" television advertisement prior to broadcasting the advertisement because  
5 information was publicly known and easily available to the Respondent prior to the broadcast  
6 of the ad to (a) confirm the fact of Mark Rose's actual employment history with the *LA Times*  
7 and (b) confirm the fact he did not write a letter to the editor of the *LA Times*. The Respondent  
8 did not receive information directly from the *LA Times* denying Mark Rose had ever worked  
9 there, but instead, the information it received from a former editor explained the search of  
10 employment records had not been concluded. The Respondent never contacted Mark Rose  
11 regarding his employment at the *LA Times*. There was no testimony or evidence presented by  
12 Respondent that Mark Rose wrote a letter to the editor of the *LA Times*. Although information  
13 was made publicly available in local newspapers regarding Mark Rose's clip file, the  
14 Respondent did not pull the ads. The Respondent also did not pull the ads after it received a  
15 copy of the October 17, 2003 fax stating that the search regarding Mark Rose's employment  
16 history had not been completed and the ads ran at least an additional 112 times. The  
17 Respondent's reliance on third-hand information was also reckless.

18 10. In the alternative, the Respondent acted with actual knowledge of the falsity of  
19 the contents of the "Pinocchio Rose" television advertisement when that advertisement (a)  
20 falsely discussed the fact of Mark Rose's employment history with the *LA Times*, and (b)  
21 falsely stated that "all he did" was write a letter to the editor of the *LA Times*. Information  
22 concerning Mark Rose's journalism clip file was provided in local newspapers available to and  
23 read by persons involved with the Respondent prior to the broadcast of the ad. Mr. Rose had  
24 publicly offered to make his clip file available. In October 2003, the spouse of the vice chair of  
25 the Respondent had copies of Mark Rose's articles and other information concerning Mark  
26 Rose's employment at the *LA Times* and that information was conveyed to the vice chair and



1 chair of the Respondent. The Pinocchio Rose television advertisements continued to be  
2 broadcast even after the information concerning Mark Rose's actual employment history with  
3 the *LA Times* was available and was made public in the local newspapers prior to the  
4 advertisement being broadcast.

5 11. PDC Staff has met its burden to establish that the Respondent committed  
6 multiple violations of RCW 42.17.530 (as defined through RCW 42.17.505) by clear and  
7 convincing evidence.

8 Based upon the above findings and conclusions, the Commission by a 3-1 vote finds  
9 multiple violations of RCW 42.17.530 (as defined through RCW 42.17.505) by the Respondent  
10 and assesses a civil penalty of \$1000. The Commission therefore enters the following order.  
11 The Commission authorizes the Executive Director to sign the Order on its behalf:

## 12 VI. ORDER

- 13 1. The Stipulation is accepted, as corrected by the parties at the hearing.
- 14 2. Respondent's oral Motion for Summary Judgment and Dismissal is denied.
- 15 3. The Commission imposes a civil penalty of \$1000 against the Respondent.

## 16 VII. APPEALS

### 17 Reconsideration By The Commission

18  
19 Any party may ask the Commission to reconsider this final order. Parties must place  
20 their requests for reconsideration in writing, include the specific grounds or reasons for the  
21 request, and deliver the request to the Public Disclosure Commission Office within TEN (10)  
22 days of the date that the Commission serves this order upon the party. Service is defined at  
23 RCW 34.05.010(19) as the date of mailing, or personal service. Pursuant to RCW  
24 34.05.470(3), the Public Disclosure Commission is deemed to have denied the petition for  
25 reconsideration if, within twenty (20) days from the date the petition is filed, the Commission  
26

1 does not either dispose of the petition or serve the parties with written notice specifying the  
2 date by which it will act on the petition. Pursuant to RCW 34.05.470(5), the Respondent is not  
3 required to ask the Public Disclosure Commission to reconsider the final order before seeking  
4 judicial review by a superior court.

5 Judicial Review – Appeal Rights

6  
7 Pursuant to RCW 42.17.395(5), a final order issued by the Public Disclosure  
8 Commission is subject to judicial review under the Administrative Procedure Act, chapter  
9 34.05 RCW. Pursuant to RCW 34.05.542(2), a petition for judicial review must be filed with  
10 the superior court as specified in the statute. The petition for judicial review must be filed with  
11 the superior court and served on the Public Disclosure Commission and any other parties  
12 within 30 days of the date that the Public Disclosure Commission serves this final order on the  
13 parties.  
14

15 If reconsideration is properly sought, the petition for judicial review must be served on  
16 the Public Disclosure Commission and any other parties within thirty (30) days after the  
17 Commission acts on the petition for reconsideration.

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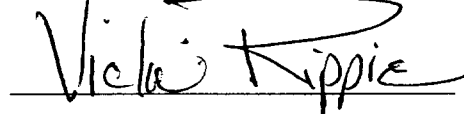
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1 Enforcement of Final Orders

2 The Commission will seek to enforce this final order in superior court under RCW  
3 42.17.395-.397, and recover legal costs and attorney's fees, if the penalty remains unpaid and  
4 no petition for judicial review has been timely filed under chapter 34.05 RCW. This action  
5 will be taken without further order by the Commission  
6

7 So ORDERED this 10<sup>th</sup> day of January, 2005.

8 WASHINGTON STATE PUBLIC  
9 DISCLOSURE COMMISSION

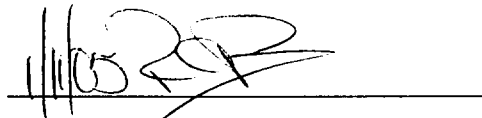
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11 VICKI RIPPIE  
12 Executive Director  
For the Commission

13 ATTACHMENT:

14 Stipulation of the Parties as to Agreed Facts and Exhibits dated October 18, 2004

15 MAILING DATE OF THIS ORDER:

16 

17 Copies of this Order to:

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